



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 11, 1996

Mr. Ivan J. Mlachak
Feldman & Associates
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR96-0028

Dear Mr. Mlachak:

As counsel for the Alvin Community College ("ACC"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code.¹ Your request was assigned ID# 30528.

ACC received a request for "copies of all billings received from attorney David M. Feldman and/or his law firm, Feldman & Associates, and copies of all payments made to him/them during the time period from January 1, 1993 until the present." You say that ACC will release copies of the requested payment information. However, you assert that all or part of the attorney bills are excepted from required public disclosure based on section 552.107(1) of the Government Code. You have enclosed the requested fee bills and marked the portion of each bill that reveals the initial of the attorney who performed the service, the description of the service performed, and the number of hours spent in performing the service as within section 552.107(1).

¹We note that the open records laws were substantially amended by the Seventy-fourth Legislature. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, 1995 Tex. Sess. Law Serv. 5127 (Vernon) (to be codified as amendments to Gov't Code ch. 552). The amendments to chapter 552 "affecting the availability of information, the inspection of information, or the copying of information, including the costs for copying information, apply only to a request for information that is received by a governmental body on or after September 1, 1995." *Id.* § 26(a), 1995 Tex. Sess. Law Serv. at 5142 (Vernon). A request for information that is received by a governmental body prior to September 1, 1995, is governed by the law in effect at the time the request is made. *Id.*

Section 552.107(1) states that information is excepted from required public disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Although section 552.107(1) appears to except information within rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, the rule cannot be applied as broadly as written to information that is requested under the Open Records Act. Open Records Decision No. 574 (1990) at 5. To prevent governmental bodies from circumventing the Open Records Act by transferring information to their attorneys, section 552.107(1) is limited to material within the attorney-client privilege for confidential communications; "unprivileged information" as defined by rule 1.05 is not excepted under section 552.107(1). Open Records Decision Nos. 574 (1990) at 5; 462 (1987) at 13-14.

Thus, this exception protects only the essence of the confidential relationship between attorney and client from the disclosure requirements of the Open Records Act. Open Records Decision No. 574 (1990) at 5. Consequently, a governmental body may not withhold fee bills in their entirety under this exception, but may only withhold information about the details of the substance of communications between the attorney and the client.

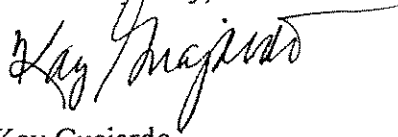
That section 552.107(1) protects only the details of the substance of attorney-client communications means that the exception applies only to information that reveals attorney advice and opinion or client confidences. See Open Records Decision No. 574 (1990). Consequently, if a governmental body seeks to withhold attorney fee bills under section 552.107(1), the governmental body must identify the portions of the bills that reveal client confidences or attorney advice. See Open Records Decision No. 589 (1991). In general, documentation of calls made, meetings attended, or memos sent is not protected under this exception. See *id.*

We have marked the portions of the requested fee bills that appear to reveal client confidences or attorney advice. ACC may withhold these portions from required public disclosure based on section 552.107(1) of the Government Code. The remainder of the bills must be released.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous

determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/ch

Ref.: ID# 30528

Enclosures: Marked documents

cc: Mr. Steven R. Friedman
1134 Woodbridge Avenue
Pearland, Texas 77584
(w/o enclosures)